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February 21, 2001

## Via Hand-Delivery

K. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37219

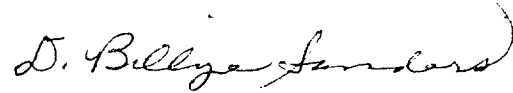
Re: Application of Memphis Networkx, LLC for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunication Services and Joint Petition of Memphis Light Gas & Water Division, a Division of the City of Memphis, Tennessee ("MLGW") and A&L Networks-Tennessee, LLC ("A&L") for Approval for Agreement Between MLGW and A&L regarding Joint Ownership of Memphis Networkx, LLC, as Amended to Substitute Memphis Broadband for A&L; Docket No.99-00909 – Objections and Responses to Data Requests

Dear Mr. Waddell:

Enclosed you will find an original plus thirteen copies of the objections and responses filed on behalf of MLGW, Memphis Networkx, LLC and Memphis Broadband, LLC to the data requests of the Tennessee Cable Telecommunications Association, Time Warner Communications and Time Warner Telecom of the Mid-South, L.P. This filing is in response to the request of the Pre-Hearing Officer in the February 16, 2001 Order to provide in each instance where the parties have relied on Objection Number 1, the applicable subpart of Objection Number 1. This filing replaces the earlier objections and responses.

K. David Waddell  
February 12, 2001  
Page 2

Sincerely,



D. Billye Sanders  
Waller Lansden Dortch & Davis  
A Professional Limited Liability Company



John Knox Walkup  
Wyatt, Tarrant & Combs

DBS:lmb  
Enclosures

cc: Parties of Record  
Richard Collier, Esq.  
Ward Huddleston, Esq.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

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IN RE:

APPLICATION OF MEMPHIS NETWORKX, LLC  
FOR A CERTIFICATE OF PUBLIC CONVENIENCE  
AND NECESSITY TO PROVIDE INTRASTATE  
TELECOMMUNICATION SERVICES AND JOINT  
PETITION OF MEMPHIS LIGHT GAS & WATER  
DIVISION, A DIVISION OF THE CITY OF  
MEMPHIS, TENNESSEE ("MLGW") AND A&L  
NETWORKS-TENNESSEE, LLC ("A&L") FOR  
APPROVAL OF AGREEMENT BETWEEN MLGW  
AND A&L REGARDING JOINT OWNERSHIP OF  
MEMPHIS NETWORKX, LLC.

Docket No. 99-00909

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**APPLICANT'S AND JOINT PETITIONERS' OBJECTIONS AND  
RESPONSES TO THE DATA REQUESTS OF THE TENNESSEE CABLE  
TELECOMMUNICATIONS ASSOCIATION, TIME WARNER  
COMMUNICATIONS, AND TIME WARNER TELECOM OF THE  
MID-SOUTH, L.P.**

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Applicant Memphis Networkx, LLC ("Applicant") and Joint Petitioners Memphis Light, Gas & Water ("MLGW") and Memphis Broadband, LLC (collectively "Joint Petitioners") hereby respond to the data requests of Intervenor, Tennessee Cable Telecommunications Association ("TCTA"), Time Warner Communications ("TWC") and Time Warner Telecom of the Mid-South, L.P. ("TWTC").

**DEFINITIONS**

- (a) The term "Identify" as used herein, with respect to any: (i) person, means to provide the name, current residential address, current residential telephone number, current business address, current business telephone number, the

occupation or job title of that person, and the name, title and employer of the person at the time in question; (ii) with respect to any other entity, the term means to provide the name by which said entity is commonly known, the current address of its principal place of business, and the nature of business currently conducted by the entity; and (iii) with respect to any document, the term means to provide the date of the document, the identity of the author or preparer of the document, the identity of each person to whom a copy or copies were sent, the type of document (*e.g.*, letter, memorandum, tape recording, etc.), the substance and summary of the contents of the document, the title or label (if any) of the document, the present or last-known location and custodian of the document and any copies thereof, and if any such document was, but is no longer, in your possession, custody or control or is no longer in existence, state whether it: (1) is missing or lost; (2) has been destroyed; or (3) has been transferred voluntarily or involuntarily, and if so, state the circumstances surrounding the authorization for each such disposition and the date of such disposition.

(b) The term "Document," as used herein, shall have the broadest possible meaning under applicable law, and means any medium, including computers or other electronic media, upon which intelligence or information can be recorded, stored and/or retrieved, and includes, without limitation, the original and the copy, regardless of origin or location, of any book, record, report, statement, diary, calendar, schedules, progress schedules, time logs, drawings, notes, audio tape, video tape, computer disk, computer tape, computer printout, electronic or voice-mail message, pamphlet, periodical, letter, memorandum (including memorandum, note or report of a meeting or conversation) or any other written, typed, reported, transcribed, punched, taped, filmed, electronic or graphic matter, however produced or reproduced, which is in your possession, custody or control or which was but is not longer in your possession, custody or control. The term

“Document” shall include all copies of documents by whatever means made, including any non-identical copies (or are different from the original because of handwritten notes, underlining, blind carbon copy or otherwise) and drafts of documents.

(c) The term “relating to” or “relates to” as used herein means evidencing, supporting, contradicting, constituting, containing, recording, discussing, summarizing, analyzing, disclosing, referring to in whole or in part, or otherwise pertaining to any way.

(d) The term “you” as used herein means Memphis Networx, MLGW, A&L or Memphis Broadband, or any other names under which you are known or have been known. These Data Requests are to be answered by Memphis Networx, MLGW, A&L and Memphis Broadband or representatives thereof who are cognizant of the relevant facts. For purposes of framing your responses to these Data Requests, the singular should be read to include the plural, and vice versa.

(e) “Person” means any natural person, corporation, corporate division, partnership, or unincorporated association, trust, government agency, or any other entity.

(f) “And” and “or” shall be construed both conjunctively and disjunctively, and each shall include the other whenever such construction will serve to bring within the scope of these Data Requests information that would not otherwise be brought within their scope.

(g) “A&L” means A&L Networks-Tennessee, LLC, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or reporting to act on behalf of A&L.

(h) “Memphis Broadband” means Memphis Broadband, LLC, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents,

directors, and all other persons acting or reporting to act on behalf of Memphis Broadband.

(I) “Memphis Angels” means Memphis Angels, LLC, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or reporting to act on behalf of Memphis Angels.

(j) “M-Net 2000” means M-Net 2000, a Tennessee general partnership, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or reporting to act on behalf of M-Net 2000.

(k) “Belz Broadband” means Belz Broadband Associates, a Tennessee general partnership, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or reporting to act on behalf of Belz Broadband.

### **OBJECTIONS APPLICABLE TO MULTIPLE DATA REQUESTS**

#### **(Hereinafter “Objections 1, 2, 3, 4, 5, or 6.”)**

The Applicant and Joint Petitioner object to the data requests on the following grounds as specified in responses below:

1. Applicant and Joint Petitioners object to these Data Requests insofar as they seek information beyond the scope of discovery clearly established by Pre-Hearing Officer Richard Collier. As reflected in the February 9, 2001 Order, at the Authority Conference on November 21, 2000, Mr. Collier was given the responsibility to rule on all preliminary matters not involving the merits of the case. On November 29, 2000, the A&L’s interest in Memphis Networx was transferred to Memphis Broadband. After November 29, 2000, neither A&L, Mr. Lowe nor any affiliated entities have an ownership interest in Memphis Networx.

Subsequently, an Amendment to the Application of Memphis Networkx, LLC and Joint Petitioners of MLGW & A&L was filed by Applicant and Joint Petitioners on December 22, 2000. Mr. Collier allowed discovery to be re-opened on a limited basis at the January 29, 2001 status conference. At this status conference, Mr. Collier stated that the “discovery would be limited in scope to the amended application.” Tr. p. 21 ln. 14-15. Mr. Collier also went on to say that based upon the “limited scope of the proceeding,” he did not “see the need for a large number of depositions or even a large amount of documentation” in this proceeding. Tr. p. 30 ln 22, p. 31 ln 1-3. The February 9, 2001 Order confirms the limited scope by ordering that discovery shall be limited to the “new issues raised by the Amended Application and the pre-filed testimony filed therewith.”

Furthermore, Tennessee Rule of Civil Procedure 26 sets forth limits on the scope of discovery. Specifically, Rule 26.06 authorizes a court, or in this case the Authority acting through Pre-Hearing Officer Collier, to establish limitations on discovery and set a schedule for complying with discovery requests. Mr. Collier set such limits on the scope of evidence at the January 29, 2001 status conference.

Examples of requests beyond the scope of discovery include, but are not limited, to:

- (a) any requests seeking information relating to events prior to the filing of the Amendment to the Application and Joint Petition which do not relate in any way to the Amendment to the Application or the Amended and Restated Operating Agreement;
- (b) any requests seeking information pertaining to Alex Lowe, A&L Networks-Tennessee, LLC (“A&L”), and other entities affiliated with Mr. Lowe who no longer have ownership interest in Memphis Networkx;
- (c) any requests which are open ended and seek information pertaining to no defined timeframe;

(d) any requests seeking information related to the activities of Memphis Broadband, LLC, and its affiliates, which do not relate to the Amendment to the Application and Joint Petition;

(e) any requests seeking information concerning activities of MLGW which do not relate to the Amendment to the Application and Joint Petition; and

(f) any requests seeking information concerning activities of Memphis Networkx which do not relate to the Amendment to the Application and Joint Petition.

2. Applicant and Joint Petitioners object to these Data Requests insofar as they seek information pertaining to commercially sensitive, confidential information. Applicant and Joint Petitioners have serious concerns that the Protective Order entered in this case may not provide sufficient protection to such proprietary information in the highly competitive telecommunications market, absent further action on the Show Cause Order, relating to an alleged violation of the Protective Order, currently pending before the Authority. In fact, information quoted in these Data Requests is from a document filed under seal which further raises concerns regarding the willingness of the parties to comply with the Protective Order. For these reasons, Applicant and Joint Petitioners believe that no response should be required unless and until these concerns have been addressed by the Authority.

3. Applicant and Joint Petitioners object to these Data Requests insofar as they seek information relating to events that transpired prior to the date of the transfer in ownership from A&L to Memphis Broadband on November 29, 2000, which is the sole basis for the limited re-opening of discovery in this docket.

4. Applicant and Joint Petitioners object to these Data Requests insofar as they seek information that is irrelevant to the limited scope of these supplemental proceedings which pertain to the Amendment to the Application.



5. Applicant and Joint Petitioners object to several definitions used by TCTA and Time Warner in these Data Requests. (i) First, for individuals, the term "identify" was defined to include residential information; Applicant and Joint Petitioners object to such a request and state that only business information should be identified. In reference to documents, "identify" also included the identity of each person to whom a copy or copies were sent, the substance and summary of the document, the last-known location and custodian of document and the reason the document is no longer in existence. Applicant and Joint Petitioners object to these burdensome requests which are unnecessary for these limited proceedings. If a document is requested and falls within the scope of discovery, the document will be produced without a summary. If a document is unavailable, Joint Petitioners and Applicant will explain the circumstances to the best of their ability. (ii) In reference to the entities "A&L," "Memphis Broadband," "Memphis Angels," "M-Net 2000," and "Belz Broadband" TCTA and Time Warner have defined these entities to include all affiliates, present and former officers, employees, agents, directors and other persons acting or reporting to act on their behalf. Applicant and Joint Petitioners object to such an overbroad definition. All references to or responses on behalf of these entities shall be made on behalf of the entity only. (iii) The definition of "you" is used to mean Memphis Networkx, MLGW, A&L or Memphis Broadband. Applicant and Joint Petitioners object to this definition which covers entities who are not responding to this limited discovery request. Applicant and Joint Petitioners offer these responses, in these limited supplemental proceedings, on behalf of MLGW, Memphis Networkx and Memphis Broadband only, which are the only entities involved in the filing of the Amendment to the Application and Joint Petition which is the sole subject of these limited proceedings.

6. Applicant and Joint Petitioners object to these data requests insofar as they seek documents, information, correspondence, etc. that are privileged under Tennessee law, including attorney – client privileged information.

### **RESPONSES TO DATA REQUESTS**

**Request No. 1a.:** Identify any and all current or former employees of MLGW and Memphis Broadband, Memphis Angels, M-Net 2000 and Belz Broadband that are current employees of Memphis Networkx. Identify the name, address and job title for each employee.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections # 1(d)(e)(f), not a new issue<sup>1</sup>, 5. Subject to and without waiver of the foregoing objections, Memphis Networkx has no current employees that are current or former employees of Memphis Broadband, Memphis Angels, M-Net 2000 or Belz Broadband. As previously disclosed in response to TCTA data request no. 16 provided in March, 2000, Dennis James, who worked for MLGW over twenty years ago, is a current employee of Memphis Networkx.

**Request No. 1b.:** Produce a copy of any and all documentation evidencing the sale of the membership interest of A&L in Memphis Networkx to Memphis Broadband,

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<sup>1</sup> Objection 1 is not limited to the examples in subsections (a)-(f) of the fourth paragraph of Objection 1. Paragraphs 1-3 of Objection 1 constitute an objection to discovery that goes beyond the limited scope of “new issues raised by the Amended Application and the pre-filed testimony filed therewith.” Therefore, requests that delve into areas where no new issues were raised in the Amendment to the Application and the pre-filed testimony filed therewith are responded to with a reference to “not a new issue” which is the abbreviated reference to paragraphs 1-3 of Objection 1.

including all closing documents and including documentation identifying all individuals who had any involvement with such sale.

**Response:** Applicant and Joint Petitioners object to the overly broad nature of this request. Applicant and Joint Petitioners object for the reasons set forth in objections #1(b)(d), 2, 4, 5, 6.

**Request No. 2.:** Identify any and all business entities in which MLGW holds an interest as of February 5, 2001, including all pursuits in which MLGW is currently engaged to increase its non-traditional revenue, *i.e.*, income generated from sources other than the delivery of electric, gas and/or water services. Describe the nature of the business, MLGW's percentage ownership or interests in the entity, and the entity's business structure.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(e), not a new issue, 4, 5 above. Subject to and without waiver of the foregoing objections, MLGW holds no interest in any entity other than Memphis Networkx. MLGW's sources of non-traditional revenues are all energy-related services conducted within the departments of MLGW.

**Request No. 3.:** Identify all individuals who had any involvement in the amendment of the Operating Agreement.

**Response:** Applicant and Joint Petitioners object to the overly broad nature of this question. Applicant and Joint Petitioners object for the reasons set forth in objections #5. Furthermore, it appears that the Intervenor may be attempting to ask about involvement with the Amended and Restated Operating Agreement, not the amendment to the Operating Agreement which had been offered during earlier proceedings in this docket (Hearing Exhibit 112.) Subject to and without waiver of the foregoing objections, the following individuals were the primary persons involved in the Amended and Restated Operating Agreement: Larry Thompson, Mike Whitten, Herman Morris, J. Maxwell Williams, and Charlotte Knight Griffin of MLGW; Mark Smith of Strang, Fletcher, Carriger, Walker, Hodge & Smith, PLC, counsel to MLGW; Frank A. McGrew and Andrew P. Seamons of Memphis Broadband; Warner B. Rodda, General Counsel of Paradigm Capital Partners, LLC; and Douglas P. Quay, W. Tad Mays, and Robert C. Starnes of Waring Cox, counsel to Memphis Broadband.

**Request No. 4.:** Identify when Memphis Broadband, Memphis Angels, M-Net 2000 and Belz Broadband were formed and set forth their business structures, listing all parent companies, subsidiaries, affiliates, present and former officers, employees, agents, directors and all other persons acting or purporting to act on behalf of these entities. Provide a copy of the charter and a list of all shareholders (or comparable investors if not organized as a traditional corporation) of these entities if not previously provided.

**Response:** Applicant and Joint Petitioners object to this request due to its overbroad nature which seeks information from entities that are not before the Authority in this docket. With regards to Memphis Broadband, the only entity cited which is before the Authority, the formation information and organizational chart were previously supplied with the Amendment to the Application and Joint Petition, Exhibits T, S. With regards to the other entities, Applicant and Joint Petitioners object for the reasons set forth in objections #1(a)(c)(d), 2, 5. Subject to and without waiver of the foregoing objections, the following information is provided:

Memphis Broadband, LLC is a Delaware limited liability company formed November 17, 2000.

Managers: Frank A. McGrew, IV, Andrew A. Seamons, and Ronald A. Belz

Address: 6410 Poplar Ave., Ste. 395  
Memphis, TN 38119

Telephone: 901-682-6060

The members of Memphis Broadband LLC are:

1. Memphis Angels LLC, a Delaware limited liability company.

Manager: Paradigm Capital Partners, LLC

Persons acting on behalf of Manager: Robert B. Blow, Frank A. McGrew, IV

Address: 6410 Poplar Ave., Ste 395  
Memphis, TN 38119

Telephone: 901-682-6060

(See below for information on identity of participating members of the Memphis Angels.)

2. M-NET 2000, a Tennessee general partnership comprised of E. L. Boyle Trust No. 1, Boyle Investment Company, Trustee; Boyle Investment Company; Norfleet R. Turner; and Mark Halperin.

Person acting on behalf of M-NET 2000: Bayard Erb

Address: 5900 Poplar Ave., Suite 209  
Memphis, TN 38110

Telephone: 901-767-0100.

3. Belz Broadband, a Tennessee general partnership comprised of Jack A. Belz, Ronald A. Belz, Martin S. Belz, Jimmie D. Williams, and Andrew J. Groveman.

Managing Partner: Ronald A. Belz

Address: 100 Peabody Place, Ste. 1400  
Memphis, TN 38103

Telephone: 901-767-4780

4. Joseph R. "Pitt" Hyde, III

Address: c/o Pittco Management LLC  
6075 Poplar Ave., Ste. 335  
Memphis, TN 38119

Telephone: 901-685-6412

The members of the Memphis Angels which have participated in the investment in Memphis Broadband by the Memphis Angels, are the following investment entities owned, directly or indirectly, by or affiliated with the following individuals as noted below:

1. Robert B. Blow  
Goodlett Frasier Ventures  
  
Address: 6410 Poplar Ave., Ste 395  
Memphis, TN 38119  
  
Telephone: 901-682-6060
2. William B. Dunavant  
Dunavant Capital Management, LP  
  
Address: 3797 New Getwell Rd.  
Memphis, TN 38118  
  
Telephone: 901-369-1500
3. Fred Smith  
Enterprise Investment Partners, LP  
  
Address: 4385 Poplar Ave.  
Memphis, TN 38117  
Attn: John Glass  
  
Telephone: 901-681-2350
4. Willard R. Sparks  
Sparks Edmundson Garner Partnership  
  
Address: 755 Ridgelake Blvd., Ste. 120  
Memphis, TN 38120  
  
Telephone: 901-766-4560
5. Thomas M. Garrott  
  
Address: One Commerce Square  
Memphis, TN 38103  
  
Telephone: 901-523-3236

**Request No. 5.:** Provide a copy of any business plans since October of 1999 of A&L, Memphis Broadband, Memphis Networx, Memphis Angels, M-Net 2000, Belz Broadband or any entity in which Mr. Lowe has any interest whatsoever.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(a)(b)(d)(f), not a new issue, 2, 3, and 4 above with respect to the request for business plans from A&L, Memphis Broadband, Memphis Angels, M-Net 2000, Belz Broadband, or any entity in which Mr. Lowe has any interest whatsoever. Subject to and without waiver of the foregoing objections, Applicant and Joint Petitioners have previously supplied the business plan of Memphis Networx under seal. (See Confidential Hearing Exhibit 86.) As indicated in Section 7 of the Amendment to the Application and Joint Petition and the Pre-Filed Supplemental Testimony of Ward Huddleston, Jr. filed December 21, 2000 (p. 2), Applicant's plan to provide the proposed services in Shelby County as set forth in Sections 7 and 8 of the original Application and Joint Petition has not changed. Memphis Networx has previously filed 3 year pro formas and capital budgets as Confidential Exhibit H. There is no requirement to submit any further detailed business plans in order to obtain approval from the Authority.

With respect to Memphis Broadband, Memphis Angels, Belz Broadband, and M-Net 2000, Memphis Broadband, LLC was formed for the sole purpose of making an investment in Memphis Networx, LLC including the acquisition of A & L's entire interest in Memphis Networx. M-Net 2000 and Belz Broadband are entities formed for the single purpose of participating in the investment in Memphis Networx, indirectly as a Member of Memphis Broadband. Memphis Angels is an entity formed for the purpose of making private equity investments in early-stage emerging growth companies located primarily in the Southeast. Certain members



of Memphis Angels participated in Memphis Broadband's investment in Memphis Networx.

**Request No. 6.:** Provide a detailed breakdown identifying "Prior Costs" and "Subsequent Costs" as those terms is defined in the Amendment to the Application and Joint Petition at Articles 1.39 and 1.41.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in #3. Subject to and without waiver of the foregoing objection, the definition of "Prior Costs" and "Subsequent Costs" have been moved from the original Umbrella Agreement (Exhibit M to the original Application) to the Amended and Restated Operating Agreement, although the meaning remains the same. Please see Hearing Exhibit 25, and **Tab 6**.

**Request No. 7.:** Provide a detailed breakdown identifying "Subsequent Costs" as that term is defined at Article 1.41 of the Amended and Restated Op[erating Agreement.]

**Response:** Please see response to #6 above.

**Request No. 8.:** Provide documentation evidencing that MLGW has made Capital Contributions to Memphis Networx of \$2,795,185.00 and that Memphis

Broadband has made Capital Contributions to Memphis Networkx of \$2,789,359.60 as stated in Article 9.1(a) of the Amended and Restated Operating Agreement, and evidencing all other cost calculations for figures listed at Article 9.1(a).

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objection #3. To the extent applicable, Applicant and Joint Petitioners also object for the reasons set forth in objection #2. Subject to and without waiver to the foregoing objections, please see **Tab 8**.

**Request No. 9.:** Please identify any and all acquisitions, mergers or other similar corporate activity in which Memphis Networkx has been involved other than the transfer of A&L's membership interest in Memphis Networkx to Memphis Broadband.

**Response:** Memphis Networkx has not been involved in any other acquisition, merger or similar corporate activity.

**Request No. 10.:** Provide a copy of any agreement or other documentation between A&L, Memphis Broadband, MLGW and/or any third party relating in any way to the substitution of Memphis Broadband as a member.

**Response:** Agreements or documentation relating to the substitution of Memphis Broadband have been previously supplied by the Applicant and Joint Petitioners. To the extent applicable, Applicant and Joint Petitioners object for the reasons set forth in objection #1(b)(d), 2, 4, 6. (See Exhibits U, X to the Amendment to the Application and Joint Petition.) Subject to and without waiver to the foregoing objections, please see **Tab 10**.

**Request No. 11.:** Provide a copy of any and all agreements or documentation of any sort relating in any way to conduit either purchased or provided by MLGW, Memphis Broadband, A&L or any third party as it relates in any way to the issues presented in the Amended and Restated Operating Agreement.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(b)(d)(e), not a new issue, and 3 with respect to the request for information from MLGW or A&L. Subject to and without waiver of the foregoing objection, there is no conduit either purchased or provided by MLGW, Memphis Broadband, A&L or any third party that relates in any way to the issues presented in the Amended and Restated Operating Agreement. Memphis Broadband has not entered into any agreements, has no documentation related to conduit and has no plans to purchase conduit that has been at issue in this docket.

**Request No. 12.:** Identify and provide a copy of any and all contracts or agreements entered into between MLGW and Mr. Alex Lowe or any entity in which Mr. Lowe acts in a representative capacity since October 1, 1999. Identify whether any such contract or agreement has been extended in any manner since the parties entered into any contract or agreement.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(a)(b)(e), not a new issue, 3, 4, 5. Subject to and without waiver of the foregoing objections, there are no contracts between Mr. Lowe and MLGW that relate in any way to the Memphis Networx project. Subject to and without waiver to the foregoing objections, please see Hearing Exhibit 54. In addition, on December 21, 2000, a third change order was renewed for the fourth and final term on (1/1/01 – 1/1/02) contract no. 10368 between A&L Underground and MLGW.

**Request No. 13.:** Identify and provide a copy of any and all contracts or agreements relating to conduit in subdivisions entered into between Mr. Lowe and any other entity or individual.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(a)(b)(c)(e), not a new issue, 3, 4, 5. Subject to and without waiver of the foregoing objections, please refer to the prior testimony of Mr. Lowe.

**Request No. 14.:** Identify and provide a copy of any records or other documentation held by Mr. Lowe which have been transferred, given to or acquired by Memphis Broadband.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(b)(d), 2, 3, 4, 5, 6.

**Request No. 15.:** Produce copies of all invoices and shipping orders for cable or conduit purchased by MLGW and referred to in Article 9.1(a) of the Amended and Restated Operating Agreement.

**Response:** Section 9.1(a) refers to capital contributions to Memphis Networkx related to the purchase of cable by Memphis Networkx. MLGW has not purchased any cable or conduit for use by Memphis Networkx. Memphis Networkx has not purchased any conduit. For information concerning the purchase of cable by Memphis Networkx, please see **Confidential Exhibit 15**.

**Request No. 16.:** Identify when the fifth governor will be designated jointly by MLGW and Memphis Broadband. Describe the methods for the joint designation of the fifth governor.

**Response:** Section 5.3 (c) of the Amended and Restated Operating Agreement provides that both MLGW and Memphis Broadband would name two members each to the Board of Governors of Memphis Networkx. MLGW and Memphis Broadband jointly shall elect a fifth governor. No date has been set for such election. Applicant and Joint Petitioners will make a supplemental filing upon election of the fifth governor.

**Request No. 17.:** Provide a copy of all documentation evidencing MLGW's audit of the expense "true up" discussed in Article 9.1 of the Amended and Restated Operating Agreement.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(a), 3, 4. Subject to and without waiver of the foregoing objections, the "Expense True-Up" discussed in Article 9.1 of the Amended and Restated Operating Agreement reflects the difference between MLGW's and Memphis Broadband's capital contributions. To the extent Mr. Thompson's pre-filed testimony indicated an audit of the "Expense True-Up" occurred, such testimony will be corrected to reflect that no audit of the "Expense True-Up" was performed. A contribution equal to or exceeding the "Expense True-Up" required by Article 9.1 was made by Memphis Broadband.

**Request No. 18.:** Identify and provide any and all documents regarding the amount of joint and common costs incurred by MLGW during FY 2000 and the first month of 2001.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(a)(e), not a new issue, 3, 4, 5. Subject to and without waiver of the foregoing objections, please see **Tab 18**, which reflects the costs incurred through November, 2000.

**Request No. 19.:** Identify and provide any and all documents showing the dollar amount of joint and common costs allocated to each division of MLGW during FY 2000 and the first month of 2001.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(a)(e), not a new issue, 3, 4, 5. Subject to and without waiver of the foregoing objections, please see response to data request no. 18.

**Request No. 20.:** Identify and provide any and all documents showing the organization expenses incurred by or on behalf of Memphis Networx through February 5, 2001.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(a)(f), not a new issue, 2, 3, 4, 5, 6.

**Request No. 21.:** Identify and provide any and all documents showing the total payments made to managerial consultants, technical consultants and legal counsel by or on behalf of Memphis Networx as of February 5, 2001. Identify the account to which each of these expenditures has been or will be classified.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(a)(b)(c)(d)(e)(f), not a new issue, 2, 3, 4, 5, 6.

**Request No. 22.:** Provide a complete list of entities, including any and all municipalities or other governmental entities, with which Memphis Broadband has entered into business relationships to provide any services. Describe the services provided or anticipated to be provided.

**Response:** Insofar as this request seeks information that is unrelated to Memphis Broadband's ownership interest in Memphis Networx, Applicant and Joint Petitioners object to such request. Applicant and Joint Petitioners further object for the reasons set forth in objection #1(c)(d). Subject to and without waiver of the foregoing objections, Memphis Broadband has not entered into any business relationships to provide any services.



**Request No. 23.:** Identify and provide a copy of all proposed or executed contracts to which Memphis Broadband is a party.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(c)(d), not a new issue, 2, 3, 4, 5, 6. Subject to and without waiver of the foregoing objections, see Exhibits U, X to the Amendment to the Application and **Tab 10.**

**Request No. 24.:** Identify all MLGW staff, plant equipment and all other resources used to date in the electric division that assisted in any way the telecom division or Memphis Networkx. Describe the level of and the extent to which each was involved.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(a)(c)(e), not a new issue, 3, 4, 5. Subject to and without waiver of the foregoing objections, please refer to the prior testimony of MLGW witnesses at the hearing.

**Request No. 25.:** [This request is filed under seal.]

**Response:** [This response is filed under seal.]

**Request No. 26.:** Describe the allocation of costs from other MLGW divisions to the telecom division to date.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(a)(e), not a new issue, 3, 4. Subject to and without waiver of the foregoing objections, the method for cost allocation within MLGW has not changed. Please see the previous testimony of John McCullough and Exhibit Q.

**Request No. 27.:** List MLGW construction projects commenced during the past five (5) years which require the deployment of telecommunications facilities on behalf of the electric, gas or water divisions. Indicate whether Memphis Networkx will lease or have access to any of these facilities, including the terms of such arrangements.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(a)(e)(f), not a new issue, 3, 4. Subject to and without waiver of the foregoing objections, any business arrangement between Memphis Networkx and MLGW will be on terms comparable to other providers. (See the previous testimony of Larry Thompson, John McCullough, and Ward Huddleston, Jr.)

**Request No. 28.:** Identify and provide any and all correspondence, memoranda, notes, contracts or any other related documents pertaining to Arthur D. Little, Inc., written by A&L, Memphis Broadband or MLGW which has not been previously provided.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(a)(b)(c)(d)(e)(f), not a new issue, 2, 3, 4, 5, 6. Subject to and without waiver of the foregoing objections, neither MLGW nor Memphis Broadband has entered into any contracts with ADL.

**Request No. 29.:** Describe any current or former business relationship of any nature whatsoever between Arthur D. Little, Inc. and A&L, Memphis Broadband and/or MLGW.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(a)(b)(c)(d)(e), not a new issue, 2, 3, 4, 5. Subject to and without waiver of the foregoing objections, Memphis Broadband has no current or former business relationships with Arthur D. Little, Inc. Please refer to prior testimony at the hearing regarding ADL.

**Request No. 30.:** Identify, describe and document any loan commitments of any nature from third parties to MLGW, A&L, Memphis Broadband or Memphis

Networx. Identify the lender and the terms and provide a copy of the applicable documentation.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(a)(b)(c)(d)(e)(f), not a new issue, 3, 4, 5. Subject to and without waiver of the foregoing objections, Memphis Broadband has no loan commitments of any nature from third parties. MLGW has no loan commitments from third parties related to the Memphis Networx project. Memphis Networx has no loan commitments from any third parties.

**Request No. 31.:** Identify, describe and provide any and all documents Memphis Networx, A&L, Memphis Broadband and/or MLGW may have prepared indicating the economic viability of the Memphis Networx venture or the review or update of Memphis Networx's business plan to reflect changes in the market and customer demand which may have occurred since the filing of the original Application.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(a)(b)(c)(d)(e)(f), not a new issue, 2, 3, 4, 5, 6.

**Request No. 32.:** Provide the date, amount and purpose of any investment, cash or otherwise, by Memphis Broadband for Memphis Networx.

**Response:** To the extent applicable, Applicant and Joint Petitioner object on the basis of objection #2. Subject to and without waiver of the foregoing objection, please see **Confidential Exhibit 32**.

**Request No. 33.:** Describe any other public utility that has proposed to enter into, has declined to enter into, or has actually entered into the telecommunications industry, either directly or indirectly, within the past five (5) years that MLGW either reviewed and/or relied upon during its decision to provide the proposed services. Provide documentation of any such reliance.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(a)(e), not a new issue, 3, 4. Subject to and without waiver of the foregoing objections, please refer to the hearing testimony of Mike Whitten and Larry Thompson.

**Request No. 34.:** List all cities, counties or governmental entities of any nature whatsoever where Memphis Broadband is currently operating any similar telecommunications service networks.

**Response:** Memphis Broadband is not currently operating any similar telecommunications service networks.

**Request No. 35.:** Identify each investor and principal of Memphis Broadband that have “direct experience in startup projects in Shelby County” as well as the identity of the startup project (Supplemental Testimony of William Larry Thompson, page 4).

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objection #5. Applicant and Joint Petitioners further object to this request insofar as it is overbroad and burdensome. Subject to and without waiver of the foregoing objections, a response will be filed in a supplemental filing.

**Request No. 36.:** Provide a complete explanation of the term “digital divide” according to MLGW’s, Memphis Broadband’s and/or Memphis Networkx’ understanding of such term and provide a copy of all workpapers and/or studies that have been prepared by or on behalf of MLGW, Memphis Broadband, A&L, and Memphis Networkx that discuss the investment required to bridge the digital divide in Shelby County.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(a)(b)(c)(d)(e)(f), not a new issue, 2, 3, 4, 5. Applicant and Joint Petitioners object to this request insofar as this request implies that Memphis Networkx has represented that it will completely bridge the digital divide in Shelby

County. Subject to and without waiver of the foregoing objections, please refer to the testimony of Larry Thompson and Ward Huddleston at the hearing.

**Request No. 37.:** Provide a description of the term “underserved area” as used in the prefiled testimony of William Larry Thompson and Andrew Seamons and identify each geographic area within Shelby County that is deemed to be “underserved” according to MLGW, Memphis Broadband and/or Memphis Networkx.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objection #1(a)(c)(d)(e)(f), not a new issue, 2, 3, 4, 5. Subject to and without waiver of the foregoing objections, please refer to the testimony of Larry Thompson at the hearing, and Section 2.5(c) of the Amended and Restated Operating Agreement.

**Request No. 38.:** Provide the investment of A&L’s ownership interest in Memphis Networkx on November 29, 2000 when Memphis Broadband acquired A&L’s membership interest and provide the amount of premium that Memphis Broadband paid to A&L in excess of A&L’s ownership interest in Memphis Networkx.

**Response:** Applicant and Joint Petitioners object for the reasons set forth in objections #1(b)(d), 2, 3, 4. Subject to and without waiver of the foregoing objections, A&L’s ownership interest in Memphis Networkx as of November 29, 2000 was \$2,789,359.60.

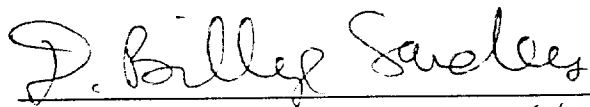
**Request No. 39.:** Provide a copy of all purchase orders and vendor invoices relating to MLGW's purchase of fiber optic cable on behalf of Memphis Networkx, the date of delivery of the material and the facilities where Memphis Networkx has inventoried the fiber optic cable.

**Response:** Please see the response to request no. 15 and **Confidential Exhibit 39.**



## CERTIFICATE OF SERVICE

I, D. Billye Sanders, hereby certify that on this 21<sup>st</sup> day of February, 2001, a true and correct copy of the foregoing was delivered by hand delivery, facsimile or U.S. Mail postage pre-paid to the Counsel of Record listed below.

  
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